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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,
11 FOR THE USE AND BENEFIT OF:
12 HELIX ELECTRIC, INC., a California
corporation,

13 Plaintiff,

14 v.

14 KISAQ RQ 8A 2JV, a joint venture;
FEDERAL INSURANCE
15 COMPANY, a New Jersey
corporation; and WESTERN SURETY
16 COMPANY, a South Dakota
corporation,

17 Defendants

18 KISAQ RQ 8A 2JV, a joint venture,

19 Counter Claimant,

20 v.

21 UNITED STATES OF AMERICA
FOR THE USE AND BENEFIT OF:
22 HELIX ELECTRIC, INC., a California
corporation; TRAVELERS
CASUALTY & SURETY COMPANY
23 OF AMERICA; and ROES 1 through
10, inclusive,

24 Counter Defendants.

25 HAYES, Judge:

26 The matter before the Court is the motion for summary judgment and partial
27 summary judgment filed by Defendant and Counter Claimant KISAQ RQ 2JV (“the
28 JV”), Defendant Federal Insurance Company (“Federal Insurance”), and Defendant

CASE NO. 15cv1024-WQH-KSC

ORDER

1 Western Surety Company (“Western Surety”). (ECF No. 25).

2 **I. Background**

3 On May 7, 2015, the United States of America for the Use and Benefit of Helix
4 Electric, Inc. (“Helix”) initiated this action by filing a complaint with a jury demand
5 against the JV, Federal Insurance, and Western Surety. (ECF No. 1). The complaint
6 alleges the following claims for relief: (1) breach of subcontract against the JV, (2)
7 recovery under the Miller Act Payment Bond against Federal Insurance and Western
8 Surety, and (3) quantum meruit against the JV. *Id.* At the hearing on this motion for
9 summary judgment, the Court dismissed the complaint with prejudice.

10 On August 10, 2015, the JV, Federal Insurance, and Western Surety collectively
11 filed an answer to the complaint. (ECF No. 8 at 1-8). The JV brings a counterclaim
12 with a jury demand against Helix and Travelers Casualty & Surety Company of
13 America (“Travelers”), and doe counter defendants. (ECF No. 8 at 9-18). The JV
14 alleges breach of subcontract against Helix and recovery under performance and
15 payment bond against Travelers. *Id.* On September 9, 2015, Helix and Travelers filed
16 an answer to the counterclaim. (ECF No. 13).

17 On October 31, 2016, Federal Insurance, the JV, and Western Surety filed a
18 motion for partial summary judgment and summary judgment. (ECF No. 25). The JV,
19 Federal Insurance and Western Surety move for summary judgment as to the three
20 causes of action alleged by Helix in the complaint and the JV moves for partial
21 summary judgment as to liability on the JV’s counterclaim for breach of subcontract
22 arising from the Helix’s alleged (1) failure to adequately staff the project, (2)
23 abandonment of the project, and (3) defective work.¹ *Id.* On November 21, 2016, Helix
24 filed a response in opposition to the motion for partial summary judgment and a
25

26 ¹ The JV requests judicial notice of the Complaint (ECF No. 1), the Answer and
27 Counterclaim filed by the JV, Federal Insurance, and Western Surety (ECF No. 8), and
28 Helix’s Answer to the Counterclaim (ECF No. 13) pursuant to Federal Rule of Evidence
201. The Court denies this request for judicial notice. *See, e.g., Asvesta v. Petroutsas*,
580 F.3d 1000, 1010 n.12 (9th Cir. 2009) (denying request for judicial notice where
judicial notice would be “unnecessary”).

1 response to the motion for summary judgment as to Helix's complaint. (ECF No. 28).
2 On November 28, 2016, the JV, Federal Insurance, and Western Surety filed a reply.²
3 (ECF No. 29).

4 On February 24, 2017, the Court heard oral argument on the motion for summary
5 judgment and partial summary judgment.

6 **II. Statement of Fact**

7 "On or about June 2, 2011, the JV entered into a written contract with the United
8 States of America . . . for a work of improvement known as P136 Bachelor Enlisted
9 Quarters, MCAS Cherry Point, NC ('Project'), Contract No. N40085-11-C-4026
10 ('Prime Contract')." (SUMF, ECF No. 29-1 at ¶ 1). "The Project involved the new
11 construction of a Bachelor Enlisted Quarters building ('BEQ'), and the replacement of
12 medium voltage 'offsite' work at electrical substations, duct banks, and manholes, at
13 the Marine Corps Air Station in Cherry Point, North Carolina." *Id.* at ¶ 2. "On or about
14 November 3, 2011, the JV entered into a written subcontract with Helix to complete all
15 of the low voltage, communications, fire alarm systems, exterior lighting, and related
16 electrical work for the BEQ, as well as the 'offsite' medium voltage replacement work."
17 *Id.* at ¶ 3. "The original Subcontract amount was \$6,150,000, which was subsequently
18 increased by \$85,466.54 in authorized change orders, resulting in a revised contract
19 value of \$6,235,466.54." *Id.* at ¶ 4.

20 The General Conditions of the Subcontract contains in part the following
21 provisions:

22 [13] B. Disputes Relating to CONTRACTOR

23 (i) Duty to Proceed:

24 SUBCONTRACTOR shall proceed diligently with performance of the
25 Work pending final resolution of any request for relief, claim, appeal, or
26 action arising out of disputes relating to CONTRACTOR.

27 ...

28 ² With its reply, the JV filed evidentiary objections to the declaration of Michael
Mason (ECF No. 28-2) and the declaration of Derek Hancock (ECF No. 28-3),
including attached Exhibits 4, 9, and 12 (ECF No. 28-4). (ECF No. 29-2). The JV
objects to the exhibits on the grounds that the declarant lacks personal knowledge and
the evidence is not self-authenticating or relevant. (ECF No. 29-2). The JV's
objections are overruled at this stage of proceedings.

14. GUARANTEE

SUBCONTRACTOR guarantees and warrants its work against all deficiencies and defects in materials and/or workmanship. SUBCONTRACTOR agrees to replace or repair, at CONTRACTOR's discretion, at SUBCONTRACTOR's sole cost and expense, and to the satisfaction of OWNER and CONTRACTOR, any and all materials or work adjudged by OWNER or CONTRACTOR to be defective or improperly installed. This guarantee shall continue for one (1) year following final acceptance and payment under the Subcontract, or for any lengthier period required by the Contract Documents.

...

22. PERFORMANCE and PROGRESS of the WORK

A. Time is of the essence in this Subcontract The Work shall be carried on promptly, with dispatch, coordinated with other work on the Project, all to the satisfaction of CONTRACTOR and OWNER. If necessary, upon instruction from CONTRACTOR, certain parts of the Work shall be prosecuted by preference to others.

25. RECOURSE BY CONTRACTOR

A. Failure of Performance

(i) Notice to Cure: If SUBCONTRACTOR refuses or fails to supply enough properly skilled workers or proper materials, or maintain the work schedule . . . or otherwise is guilty of a material breach of this Agreement, SUBCONTRACTOR shall be deemed in default of this Subcontract. If SUBCONTRACTOR fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then CONTRACTOR, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

(a) supply such number of workers and quantity of materials, equipment, or other facilities as CONTRACTOR deems necessary for the completion of SUBCONTRACTOR's work, or any part thereof which SUBCONTRACTOR has failed to complete or perform after said notice; and charge the cost thereof to SUBCONTRACTOR, who shall be liable for payment of same including reasonable overhead, profit, and attorney's fees.

(b) contract with one or more additional contractors to perform such part of SUBCONTRACTOR's Work as CONTRACTOR shall determine will provide the most expeditious completion of the total work, and charge the cost thereof to SUBCONTRACTOR, withhold payment of any monies due SUBCONTRACTOR pending corrective action in amount sufficient to cover losses, and compel performance to the extent required by and to the satisfaction of CONTRACTOR and OWNER.

Id. at ¶¶ 5-9.

Following an electrical outage which occurred on July 31, 2014, the Government issued a Partial Suspension Order on the Project. *Id.* at ¶¶ 9,12. "The Partial Suspension Order prohibited the JV and Helix from resuming any electrical work on the Project until an acceptable 'Plan of Action' addressing safety and quality control procedures

1 for electrical work on the Project was approved by the Government.” *Id.* at ¶ 14. “The
2 Government lifted the suspension order on August 28, 2014.” *Id.* at ¶ 26.

3 “On September 5, 2014, shortly after resuming electrical work on the Project, the
4 JV notified Helix that as a result of the month-long suspension of all electrical work,
5 Helix had been ‘elevated to the top of the most critical activity list.’” *Id.* at ¶ 29.
6 “Helix was advised by the JV to increase working hours and/or its work force to a level
7 that could meet the JV’s completion schedule.” *Id.* at ¶ 30. “Despite the JV’s
8 September 5, 2014 request to Helix to increase working hours and/or its force, Helix did
9 neither.” *Id.* at ¶ 31 .

10 On October 3, 2014, the JV sent a Notice to Cure letter to Helix stating,
11 [The JV] has a concern about [Helix] is [sic] inadequately staffed and
12 therefore unable to meet the required schedule of work under the
13 referenced Prime Contract.
14 Time is of the essence, so in accordance with Paragraph 25 (A) “Recourse
by Contractor” of the reference Subcontract, this letter serves as your
notice to cure within 48 hours after receipt of this letter and you must
continue to satisfactorily perform thereafter.

15 (Exhibit 12, ECF No. 25-5 at 66).

16 “Helix responded to the Notice to Cure by disputing the claim of inadequate
17 manpower, and again, refusing to supplement its work force.” (SUMF, ECF No. 29-1
18 at ¶ 34). “Helix refused to supplement its work force because it believed that it had
19 adequate staff to complete the work as scheduled, and that it was not obligated to
20 complete out-of-sequence work.” *Id.* at ¶ 35.

21 A copy of a letter to the JV from Derek Hancock, Project Manager at Helix, in
22 response to the Notice to Cure letter states,

23 In regard to [the JV’s] claim of inadequate manpower by [Helix], this
24 assertion is absolutely false. If the JV is in possession of concrete
25 information that would indicate otherwise, rather than random, unfounded
26 assertions in a Notice to Cure, then please forward this information and
27 [Helix] will respond accordingly. As I’m sure you are aware, even the
28 most recent updated CPM Field Schedule . . . is now completely
inaccurate because of the continued delays in preceding activities that are
having a direct impact on [Helix’s] ability to perform our work in a timely
and productive manner. In an effort to help manage the schedule
activities, Helix Electric has provided two site observations reports, dated
7/8/14 and 7/22/14, which indicated conditions on the project that were
impeding [Helix’s] ability to perform the remaining work. To date we

1 have received no response to these reports. ... Our current manpower,
2 based on real time observations of the project is at the proper level to
support the available work.

3 (Exhibit 4, ECF No. 28-4 at 16; Exhibit 12, ECF No. 25-6 at 2).

4 A subsequent letter to the JV from Brian Jordan, the Executive Vice President of
5 Helix, on January 19, 2015 states that Helix “has always provided sufficient manpower
6 to perform under the terms of our subcontract.” (Exhibit 9, ECF No. 28-4 at 26). In the
7 deposition of Brian Jordan, Jordan states that Helix rejected the request to add
8 manpower, “Because we had enough – we had a core group of people there run by the
9 superintendent, Herb who we felt was the most efficient way that we could pursue that
10 job in light of how Kisaq-RQ was mismanaging it.” (Exhibit 12, ECF No. 28-4 at 42-
11 43).

12 “Beginning on November 11, 2014, and continuing through January 15, 2015,
13 the JV utilized electricians and laborers provided by the Lyter Group (‘Lyter’) to
14 supplement Helix’s work force, and perform work falling within Helix’s scope of work
15 under the Subcontract.” (ECF No. 29-1 at ¶ 39). “While Helix disagreed with the
16 supplementation, the electrical work on the Project progressed from November 11, 2014
17 through January 15, 2015, with no criticisms from Helix regarding the quality of
18 electrical work provided by Lyter.” *Id.* at ¶ 40. “On January 12, 2015, Helix told the
19 JV that it would no longer work or coordinate with the supplemental personnel, and if
20 the supplemental personnel remained on the Project past January 13, 2015, Helix would
21 cease all work on the Project and remove all company tools, equipment and personnel
22 from the Project site.” *Id.* at ¶ 41. “The JV kept Lyter’s supplemental personnel on site
23 past Helix’s January 13, 2015 ‘deadline.’” *Id.* at ¶ 42. “On January 14, 2015, Helix
24 informed the JV that it was demobilizing from the Project, and ceasing its work.” *Id.*
25 at ¶ 43.

26 “On January 14, 2015, the JV issued a Notice to Cure to Helix under paragraph
27 25(A) of the Subcontract advising Helix that the JV considered Helix in default of the
28 Subcontract as a result of its abandonment of the Project.” *Id.* at ¶ 45. “Following

1 Helix’s demobilization from the Project, the JV utilized a combination of Blackwater
2 . . . and Lyter Group . . . to complete Helix’s remaining scope of work under the
3 Subcontract.” *Id.* at ¶ 48.

4 “Following completion of the Project, and after Helix had left without
5 completing its Subcontract, it was discovered that certain medium voltage off-site work
6 performed by Helix was defective.” *Id.* at ¶ 35. “In particular the crimping of every
7 one of almost 900 load break elbows was done with an incorrect crimping tool,
8 resulting in loose joints, air gaps, and/or bent fittings.” *Id.* at ¶ 49. “Helix admits that
9 it used the wrong crimping tool and is responsible for the defective elbow/crimping
10 conditions on the Project.” *Id.* at ¶ 52. “In addition to the elbow crimping issues,
11 additional electrical repair work was demanded by the Government as a result of
12 various deficiencies in Helix’s work.” *Id.* at ¶ 53. “The deficiencies primarily stem
13 from Helix’s use of an incorrect universal splicing tool, and the lack of slack in the
14 existing cables to replace splices.” *Id.* at ¶ 54. The parties agree that Helix has
15 admitted it was at fault for the end line splices and elbow crimping issues. *Id.* at ¶¶ 52,
16 55.

17 **III. Legal Standard on Summary Judgment**

18 “A party may move for summary judgment, identifying each claim or defense—or
19 the part of each claim or defense—on which summary judgment is sought. The court
20 shall grant summary judgment if the movant shows that there is no genuine dispute as
21 to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
22 Civ. P. 56(a). A material fact is one that is relevant to an element of a claim or defense
23 and whose existence might affect the outcome of the suit. *See Matsushita Elec. Indus.*
24 *Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). The materiality of a fact
25 is determined by the substantive law governing the claim or defense. *See Anderson v.*
26 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317,
27 322-24 (1986).

28 The moving party has the initial burden of demonstrating that summary judgment

1 is proper. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 153 (1970). The burden then
2 shifts to the opposing party to provide admissible evidence beyond the pleadings to
3 show that summary judgment is not appropriate. *See Anderson*, 477 U.S. at 256;
4 *Celotex*, 477 U.S. at 322, 324. The opposing party's evidence is to be believed, and all
5 justifiable inferences are to be drawn in its favor. *See Anderson*, 477 U.S. at 255. To
6 avoid summary judgment, the opposing party cannot rest solely on conclusory
7 allegations of fact or law. *See Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986).
8 Instead, the nonmovant must designate which specific facts show that there is a genuine
9 issue for trial. *See Anderson*, 477 U.S. at 256.

10 **IV. The JV's Breach of Subcontract Counterclaim Against Helix**

11 The JV contends it is entitled to partial summary judgment as to liability on its
12 breach of subcontract counterclaim against Helix arising from Helix's alleged (1)
13 failure to adequately staff the project, (2) abandonment of the project, and (3) defective
14 work on the project.³ (ECF No. 25-1 at 15-18). The JV seeks partial summary
15 judgment only as to liability. (ECF No. 29 at 8). Helix contends that the JV is not
16 entitled to partial summary judgment as to liability on its breach of subcontract claim
17 in relation to any of the three specific instances of breach alleged by the JV. (ECF No.
18 28)

19 A breach of contract cause of action includes the following elements: "(1) the
20 contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's
21 breach, and (4) the resulting damages to plaintiff." *Bushell v. JPMorgan Chase Bank*,
22 *N.A.*, 163 Cal. Rptr. 3d 539, 544 (Cal. Ct. App. 2013) (citing *Reichert v. General Ins.*
23 *Co.*, 443 P.2d 377, 381 (Cal. 1968)). "The basic goal of contract interpretation is to
24 give effect to the parties' mutual intent at the time of contracting. . . . When a contract
25 is reduced to writing, the parties' intention is determined from the writing alone, if
26 possible. . . . 'The words of a contract are to be understood in their ordinary and popular

27 ³ The JV alleged a second claim for, "Recovery Under Performance and Payment
28 Bond Against" against Travelers, that is not before the Court on the motion for partial
summary judgment. (ECF No. 8 at 16).

sense.” *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.*, 135 Cal. Rptr. 2d 505, 513 (Cal. Ct. App. 2003) (quoting Cal. Civ. Code § 1644) (internal citations omitted). “When a dispute arises over the meaning of contract language, the first question to be decided is whether the language is reasonably susceptible to the interpretation urged by the party. If it is not, the case is over. . . . If the court decides the language is reasonably susceptible to the interpretation urged, the court moves to the second question: what did the parties intend the language to mean?” *Cedars-Sinai Med. Ctr. v. Shewry*, 41 Cal. Rptr. 3d 48, 60 (Cal. Ct. App. 2006) (quoting *Southern Cal. Edison Co. v. Superior Court*, 44 Cal. Rptr. 2d 227, 232 (Cal. Ct. App. 1995); *Oceanside 84, Ltd. v. Fidelity Federal Bank*, 66 Cal. Rptr. 2d 487, 492 (Cal. Ct. App. 1997)). “The interpretation of a contract is a question of law when the contract terms are unambiguous.” *Abifadel v. Cigna Ins. Co.*, 9 Cal. Rptr. 2d 910, 919 (Cal. Ct. App. 1992).

A. Failure to Adequately Staff

The JV contends that there is no dispute of material fact that Helix was contractually obligated to supplement its work force and change the sequence of its work at the JV’s request. The JV contends that Helix breached the subcontract by refusing to supplement its work force and change its sequence of work. The JV contends that pursuant to paragraphs 22(A) and 25 of the subcontract, it had the authority to determine whether Helix had provided enough worker and to request that Helix supplement its work force when the JV felt it was necessary. (ECF No. 25-1 at 15-18). Helix contends that the JV is permitted to request that Helix supplement the work force under the subcontract only if Helix failed to supply enough properly skilled workers. (ECF No. 28 at 7). Helix contends that there is a triable issue of fact as to whether Helix’s work force was adequate and to whether the JV demanded that Helix supplement its work force as a means to accelerate the work schedule. *Id.* at 7-11.

Paragraph 25 of the subcontract provides that the subcontractor, Helix, is in breach of the contract “[i]f SUBCONTRACTOR refuses or fails to provide enough

1 properly skilled workers or proper materials, or maintain the work schedule.” (ECF No.
2 29-1 at ¶ 8). This paragraph also provides the JV with remedies of supplying additional
3 workers as it feels necessary for the completion of the project or contracting with
4 additional contractors to perform Helix’s work if Helix fails “to commence and
5 continue satisfactory correction of the default” within forty-eight hours of receiving a
6 a notice to cure from the JV. *Id.* Paragraph 22(A) of the project provides that, “Time
7 is of the essence in this Subcontract . . . The Work shall be carried on promptly, with
8 dispatch, coordinated with other work on the Project, all to the satisfaction of
9 CONTRACTOR and OWNER. If necessary, upon instruction from CONTRACTOR,
10 certain parts of the Work shall be prosecuted by preference to others.” (ECF No. 29-1
11 at ¶7). The Court concludes that the unambiguous terms of the subcontract provide that
12 Helix must supply enough properly skilled workers and that Helix is in breach of the
13 subcontract if it refuses to supply enough properly skilled workers. No provision of the
14 subcontract provides the JV with the sole discretion to determine if the work force
15 supplied by Helix is sufficient.

16 It is undisputed that Helix refused to supplement its work force following the
17 notice to cure from the JV. (ECF No. 29-1 at ¶ 34). However, Helix provides evidence
18 that it supplied enough properly skilled workers. In the October 7, 2014 letter to the JV
19 from Derek Hancock (Exhibit 4, ECF No. 28-4 at 16), the deposition of Brian Jordan
20 (Exhibit 12, ECF No. 28-4 at 42-43), and the January 19, 2015 letter to the JV from
21 Brian Jordan (Exhibit 9, ECF No. 28-4 at 26), Helix continually represented that it
22 refused to supply additional workers because its current manpower was sufficient to
23 support the available work. The Court concludes that material issues of disputed fact
24 exist as to whether Helix was in breach of the subcontract for refusing to supply enough
25 properly skilled workers to maintain the work schedule. The JV’s motion for partial
26 summary judgment as to liability on its counterclaim for breach of the subcontract
27 arising from any failure to adequately staff the project is denied.

28 ///

1 **B. Abandonment of Project**

2 The JV contends that there is no disputed issue of material fact that Helix
3 materially breached the subcontract when it abandoned and failed to complete its work
4 on the subcontract. (ECF No. 25-1 at 18-21). Helix contends that leaving the project
5 did not cause the JV to incur damages. Helix contends there are disputed issues of fact
6 as to whether the unpaid sum remaining on the subcontract was sufficient to cover the
7 work remaining on the project. Helix contends that there are disputed facts as to the
8 JV's mismanagement of the project and failure to timely pay Helix. (ECF No. 28 at 11-
9 13).

10 It is undisputed that the JV "entered into a written subcontract with Helix to
11 complete all of the low voltage communications, fire alarm systems, exterior lighting,
12 and related electrical work for the BEQ, as well as the 'offsite' medium voltage
13 replacement work." (ECF No. 29-1 at ¶ 3). It is undisputed that Helix informed the JV
14 that it was leaving the project in January of 2015, prior to completion of the project.
15 *Id.* at ¶ 43. Paragraph 13(B)(i) of the subcontract provides for a duty to proceed:
16 "SUBCONTRACTOR shall proceed diligently with performance of the Work pending
17 final resolution of any request for relief, claim, appeal or action arising out of disputes
18 relating to CONTRACTOR." *Id.* at ¶ 5. The relevant language of the subcontract
19 provides that Helix had a duty to complete its work on the subcontract and, in the case
20 of any dispute, Helix was required to continue working on the project until final
21 resolution of any request for relief, claim, appeal, or action. The Court concludes that
22 under the undisputed facts of the case and the terms of the subcontract, Helix has not
23 satisfied its burden to raise a disputed issue of material fact as to liability arising from
24 its abandonment of the project.

25 Helix contends that leaving the project did not cause the JV to incur damages
26 because the JV could have completed the project for the amount remaining on the
27 subcontract at the time Helix left. Helix contends there are disputed issues of fact as to
28 damages. The Court cannot address issues as to damages on the record before it

1 because the JV has moved for partial summary judgment on the issue of liability and
2 has not moved for summary judgment on the issue of damages.

3 The Court grants the JV's motion for partial summary judgment as to liability on
4 its counterclaim for breach of subcontract arising out of Helix's abandonment of the
5 project.

6 **C. Defective Work**

7 The JV contends that there is no dispute of material fact that Helix breached the
8 subcontract by performing defective work on the project and failing to repair, replace,
9 or pay for the same work. (ECF No. 25-1 at 21-23). Helix admits liability for
10 reasonable costs of repair for the load break elbows due to improper crimping and the
11 end line splices. However, Helix contends that the counterclaim for breach of contract
12 includes other allegations and seeks damages not addressed in the motion. Helix
13 contends that the JV's request for a liability finding on all allegations made in the
14 counterclaim is overbroad and a motion for summary judgment is the improper vehicle
15 to address limited liability issues. (ECF No. 28 at 13).

16 Paragraph 14 of the subcontract provides, "GUARANTEE
17 SUBCONTRACTOR guarantees and warrants its work against all deficiencies and
18 defects in materials and/or workmanship. SUBCONTRACTOR agrees to replace or
19 repair, at CONTRACTOR's discretion, at SUBCONTRACTOR's sole cost and
20 expense, and to the satisfaction of OWNER and CONTRACTOR, any and all materials
21 or work adjudged by OWNER or CONTRACTOR to be defective or improperly
22 installed." (ECF No. 29-1 at ¶ 6). Helix admits liability for the defective end line
23 splices and defective crimping conditions and it is undisputed that pursuant to the
24 subcontract, Helix guarantees and warrants its work against all deficiencies. (ECF No.
25 29-1 at ¶¶ 6, 52-55). The Court concludes there is no disputed issue of material fact that
26 Helix is liable for the defective end line splices and the defective crimping conditions.
27 To the extent that the JV contends that Helix is liable as a matter of law for any
28 defective work beyond the scope of the end line splices and crimping conditions, the

1 Court concludes that the JV has not met its burden on this motion for partial summary
2 judgment.

3 **V. Helix's Complaint**


4 During oral argument, the Helix moved to dismiss Helix's complaint against the
5 JV, Federal Insurance and Western Surety with prejudice.⁴ The Court orally granted
6 the motion and dismissed the complaint against the JV, Federal Insurance, and Western
7 Surety with prejudice. (ECF No. 1). The motion for summary judgment filed by the
8 JV, Federal Insurance, and Western Surety as to Helix's complaint is denied as moot.
9 (ECF No. 25).

10 **VI. Conclusion**

11 IT IS HEREBY ORDERED that the JV's motion for partial summary judgment
12 (ECF No. 25) as to liability on its counterclaims against Helix is GRANTED as to
13 liability on the breach of subcontract arising from Helix's abandonment of the project
14 and defective work on the end line splices and crimping conditions and otherwise
15 DENIED.

16 IT IS FURTHER ORDERED that Helix's complaint against the JV, Federal
17 Insurance, and Western Surety is dismissed with prejudice. (ECF No. 1). The motion
18 for summary judgment filed by the JV, Federal Insurance, and Western Surety (ECF
19 No. 25) as to the causes of action alleged in Helix's complaint is DENIED as moot.

20 DATED: April 10, 2017

21 
22 **WILLIAM Q. HAYES**
23 United States District Judge
24
25
26

27 ⁴ Helix contends that, "[G]iven the current status of the case, Helix no longer
28 needs its claims for affirmative relief because its rights are protected under its Tenth
Affirmative Defense of 'Set-off.'" (ECF No. 28 at 14).